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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. _____

JAMES S. NEIFF,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

The Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above case on November 5, 1970.

OPINIONS BELOW

The District Court for the Northern District of Indiana, South Bend Division, did not prepare a written opinion in this

cause. The opinion of the Court of Appeals for the Seventh Circuit is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the Seventh Circuit was made and entered on November 5, 1970, and a copy thereof is appended to this petition in the Appendix at pages 26 to 31 . The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Your petitioner was convicted in the United States District Court for the Northern District of Indiana, South Bend Division, of knowingly engaging in the selling and disposing of certain depressant and stimulant drugs, and being so engaged, failing to keep a complete and accurate record with respect to such drugs as required by Section 331(q)(4)

Title 21 of the United States Code. The petitioner was tried by the Court sitting without a jury, and on September 15, 1969, he was found guilty. On the 29th day of September, 1969, the defendant was sentenced to a term of one year, six months to be served in prison and six months on probation.

Prior to the trial, the petitioner filed a motion to dismiss the prosecution by setting up as a complete defense to the charge his Fifth Amendment privilege against self-incrimination, stating that the keeping of the records required would tend to incriminate him or constitute a link in the chain of proof required to convict him of a crime under the laws of the United States or under the laws of the State of Indiana. The motion was denied. Following the presentation of the government's

case, the petitioner elected not to take the stand and rested without adducing any evidence, following which he was immediately convicted by the Court. The question presented is:

1. Did the Trial Court err in denying petitioner's motion to dismiss based upon his invocation of his Fifth Amendment rights not to be compelled to be a witness against himself?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent portion of the Fifth Amendment to the Constitution is as follows:

> "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

The pertinent portion of Title 21 U.S.C. Section 331 reads as follows:

331. Prohibited acts - . . .

(a) . . .

(q) . . .

(4) The failure to prepare or obtain, or the failure to keep a complete and accurate record with respect to any drug as required by section 360a(d) of this title;. . . .

The pertinent portion of Title 21 U.S.C. Section 360a reads as follows:

360a. Depressant and stimulant drugs.

(a) No person shall manufacture, compound or process any depressant or stimulant drug, except that this prohibition shall not apply to the following persons whose activities in connection with any such drug are solely as specified in this sub-section:

(1) (A) . . .
(B) . . .

(2) . . .

(3) . . .

(4) Practitioners licensed by law to prescribe or administer depressant or stimulant drugs, while acting in the course of their professional practice.

(5) . . .

(6) . . .

(7) . . .

(b) . . .

(1) . . .

(2) . . .

(c) . . .

(d)

(1) Every person engaged in manufacturing, compounding, processing, selling, delivering, or otherwise disposing of any depressant or stimulant drug shall prepare a complete and accurate record of all stocks of each such drug on hand and shall keep such record for three years. On and after the effective date of this section, every person manufacturing, compounding, or processing any depressant or stimulant drug shall prepare and keep, for not less than three years, a complete and accurate record of the kind and quantity of each such drug manufactured, compounded, or processed and the date of such manufacture, compounding or processing; and every person selling, delivering, or otherwise disposing of any depressant or stimulant drug shall prepare or obtain, and keep for not less than three years, a complete and accurate record of the kind and quantity of each such drug received,

sold, delivered, or otherwise disposed of, the name and address of the person and the registration number, if any, assigned to such person by the Secretary pursuant to Section 510(e) (Sec. 360(e) of this title), from whom it was received and to whom it was sold, delivered, or otherwise disposed of, and the date of such transaction. No separate records, nor set form or forms for any of the foregoing records, shall be required as long as records containing the required information are available.

(2) (A) . . .
(B) . . .

(3) The provision of paragraphs (1) and (2) of this sub-section shall not apply to a licensed practitioner described in sub-section (a)(4) with respect to any depressant or stimulant drug received, prepared, processed, administered, or dispensed by him in the course of his professional practice, unless such practitioner regularly engages in dispensing any such drug or drugs to his patients for which they are charged, either separately or together with charges for other professional services.

. . .

STATEMENT OF THE CASE

This case arose out of the filing of an

information by the United States Attorney charging that on or about the 3rd day of December, 1968, the petitioner did knowingly engage in the selling and disposing of certain depressant and stimulant drugs, and being so engaged did fail to keep a complete and accurate record with respect to such drugs in violation of Section 331(q)(4) Title 21 of the United States Code.

The defendant was tried by the Court sitting without a jury, and on September 15, 1969, he was found guilty. On September 29, 1969, the petitioner was sentenced to a term of one year, six months to be served in prison and six months on probation. Prior to the trial of this cause, the petitioner filed a written motion to dismiss this prosecution, pursuant to Rule 12(b)(1) of the Federal Rules of Criminal Procedure, on the grounds that

the keeping of said records might incriminate him or might constitute a link in the chain of proof required to convict him of crimes under the laws of the United States or under the laws of the State of Indiana. The Court denied the motion to dismiss, and the government proceeded with the presentation of evidence to support the charge, which briefly stated showed that between the years 1966 and May of 1968 the defendant received some 98,100 dosage units of controlled drugs. On June 13, 1968, an inventory of drugs on hand was made by Agent Michael L. Jackson and signed by the defendant. This was admitted into evidence as Government Exhibit Number 47. That inventory disclosed that there were approximately 3,780 dosage units of controlled drugs in the defendant's possession. The only purchase made by the

defendant after May of 1968, according to government witnesses, was one purchase in October, 1968, with the amount unspecified. Richard Kline, a government narcotics agent, who testified on behalf of the government, stated that when he examined the defendant's premises on December 3, 1968, he did not find a beginning inventory of drugs as required by the Act, nor did he find any records relating to the disposition of the drugs which had come into defendant's possession. The defendant declined to take the stand and rested without presenting any evidence. Immediately subsequent to this, the Court pronounced judgment, finding the defendant guilty as charged in the information. Following his sentencing, the defendant did, on the 29th day of September, 1969, file his notice of appeal to the United States Court of Appeals

for the Seventh Circuit, and on November 5, 1970, the United States Court of Appeals affirmed the judgment of the District Court. The Court of Appeals takes the position that the records required by Section 331(q)(4) are not records of "unlawful activity, thus compelling disclosure of a crime. Rather they are required records of a lawful professional activity in dealing with dangerous drugs under the Act. This legislation is a part of the authorized governmental plan regulating the legitimate drug industry from manufacturing to dispensing controlled drugs." The Court goes on to state that "there is no claim here that records kept by defendant would have disclosed the commission of a crime in the unlawful disposition of controlled drugs. There is no claim that defendant unlawfully disposed of such drugs. The sole

charge is that having had and disposed of such drugs, defendant kept no inventory and disposed of records." The Court of Appeals completely failed to even discuss petitioner's claim that the keeping of such records as are required by the Act and the making of such records available to government agents could have resulted in his prosecution for crimes under the Acts in question here as well as under the laws of the State of Indiana.

REASONS FOR GRANTING WRIT

The decision of the Court of Appeals for the Seventh Circuit should be reviewed and reversed because it has decided an important question of Federal law which has not been, but should be, settled by this Court. The question is whether a person, prosecuted for failure to keep the records required by Section 331 of Title 21 of the

United States Code, is entitled to the protection of the right against self-incrimination guaranteed to all citizens by the Fifth Amendment to the United States Constitution, or whether for those persons subject to the provisions of this Act the privilege against self-incrimination no longer exists.

The Court of Appeals for the Seventh Circuit leaned heavily on its assertion that

> "the defendant is charged with failing to keep required records with respect to depressant and stimulant drugs received and dispensed by him in the regular course of his ~~medical practice~~. He is not charged with the illegal sale of such drugs, but solely with the failure to keep such records."

Petitioner fails to see the basis for the distinction which is made by the Court of Appeals. The Court of Appeals apparently thinks that since the charge only involves failure to keep the records, the petitioner

cannot avail himself of his rights against self-incrimination because offenses which might be disclosed by the keeping and publication of said records are not the ones for which he is presently being prosecuted. The Court fails to recognise the fact that had required records disclosing commissions of crime been kept and made available to the Federal authorities, the petitioner would have been prosecuted for these crimes and not for failure to keep records.

The Court of Appeals distinguishes Leary v. United States, 395 U.S. 6, (1969), and the preceding holdings in Marchetti v. United States, 390 U.S. 39, (1968); Grosso v. United States, 390 U.S. 62, (1968), and Haynes v. United States, 390 U.S. 85, (1968).

Leary, of course, involved the prosecution of Leary for failure to supply a form

required of all purchasers of marijuana and on one other charge, and the Supreme Court found that the requirement that Leary supply the form in effect made him report to the government his otherwise illegal act of purchasing marijuana. Marchetti was charged, among other things, with the failure to register and pay the occupational tax on wagers. Marchetti was not charged with gambling as such, but only with the failure to register and pay the occupational tax. His conviction on these points was also overturned. The Court of Appeals in the present case says that there is no claim here that records kept by the defendant would have disclosed the commission of a crime and the unlawful disposition of controlled drugs, nor is there a claim that defendant unlawfully disposed of such drugs. "The sole charge is that having

had and disposed of such drugs, defendant kept no inventory and disposal records. This is not within the proscriptions of Leary, Marchetti, Grosso and Haynes, supra." The Court of Appeals disregards defendant's motion to dismiss filed in this case which specifically stated that the keeping of the required records might tend to incriminate him or might constitute a link in the chain of proof required to convict him of a crime under the laws of the United States or under the laws of the State of Indiana. Surely the Court of Appeals would not require the petitioner here to actually disclose in specific terms the offenses which he fears these records might show him guilty of in order to successfully invoke his privilege, and yet that seems to be the import of its decision. In addition, the Court of Appeals

apparently feels that where petitioner is not charged specifically with the crime of unlawful disposal, then the mere fact that such a crime would be disclosed by his records is no defense to him being prosecuted for failure to keep and supply these records to Federal officials. The petitioner contends that this is a direct and unequivocable denial of his rights against self-incrimination.

The Marchetti triology discussed at length the case of Shapiro v. United States, 335 U.S. 1. Shapiro was charged with failing to keep records required by the Price Control Acts in effect during World War II. He raised the defense of the privilege against self-incrimination which the Court refused to accept. The Court laid down three guide lines which it said exempted Shapiro from the applicability of the privilege against self-incrimination.

These three requirements are as follows:

1. The documents required to be kept must be analogous to "public documents".

2. They must be of a kind customarily kept by the regulated party.

3. The statutory requirements must be essentially regulatory rather than aimed at a group inherently suspect to a criminal activity.

The petitioner here earnestly contends that Shapiro should not be applied in the present case to deprive him of his constitutional rights. Specifically, the documents which are required to be kept by Title 21 U.S.C. Section 331(q)(4) are not "analogous to public documents". Indeed they are very private documents, having mostly to do with the personal medical affairs of the patients of the petitioner. Secondly, the documents

required to be kept by petitioner are not of a kind customarily kept by him, and therefore the second requirement of Shapiro is not present. Lastly, and despite strong government contentions to the contrary, the Acts here in question, including Title 21 U.S.C. Section 331(q)(4) and Section 360(a) are not primarily designed to regulate the legitimate drug industry, but rather are designed to uncover evidence of crimes against the laws of the United States and of the various states by making those both within and without the "legitimate" drug industry keep absolutely accurate and detailed records as to the disposition of every single item of controlled drugs, with which they come in contact, regardless of whether such records would disclose evidence of the com-

mission of crimes against the laws of the United States or of any State and with no grant of immunity when such was the case. Surely if the purpose of Congress was to regulate rather than to amass information for the purpose of uncovering violations of the law, then it could have included a grant of immunity in those cases where the records required to be kept disclosed information relating to violations of the United States or Federal Law by the keeper of the record.

Petitioner does not suggest that the Acts here in question are unconstitutional in whole or in part. His only concern is that his reliance upon his rights against self-incrimination guaranteed under the Fifth Amendment be protected by the authority of this Court.

CONCLUSION

The conviction of petitioner in the face of his reliance upon his rights against self-incrimination is nothing less than an unconstitutional attempt to coerce him into giving evidence against himself which would when given be used against him to secure his conviction under the laws of the United States and under the laws of the State of Indiana. Surely the Congress of the United States may not, under the guise of "regulation", compel citizens to keep records of their illegal activity even in what are generally legitimate areas of Congressional concern and report those unlawful activities to the government when requested to do so. Such power in the hands of Congress would make shambles out of the privilege against self-

incrimination and to traditional notions of justice and fair play. It takes no amount of imagination to invision legitimate areas of Congressional regulation where records disclosing criminal conduct on the part of the record keeper may lawfully be required, if the decision of the Court of Appeals in this case is not overturned. Your petitioner, therefore, respectfully requests the issuance of the Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit to review its decision herein and to reverse the same.

Myron J. Hack

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STATE OF INDIANA)
)SS:
ST. JOSEPH COUNTY)

CERTIFICATE OF SERVICE

The undersigned, being first duly sworn upon his oath, hereby certifies that he served a copy of the foregoing Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit upon Richard L. Keiser, Assistant United States Attorney, Federal Building, South Bend, Indiana 46601, upon the Solicitor General, Department of Justice, Washington, D.C. 20530, and upon William C. Lee, United States Attorney, Federal Building, Fort Wayne, Indiana, by depositing copies so addressed with sufficient postage affixed this 1st day of ~~December~~, 1970.

George P. Roberts

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 30th day of November, 1970.

Shirley J. Voight

Shirley J. Voight, Notary Public

My Commission Expires:

January 15, 1973.

In the
United States Court of Appeals
For the Seventh Circuit

SEPTEMBER TERM, 1970 — SEPTEMBER SESSION, 1970

No. 18148
UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
JAMES S. REIFF,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Indiana, South Bend Division.

November 5, 1970

Before HASTINGS, *Senior Circuit Judge*, and FAIRCHILD and CUMMINGS, *Circuit Judges*.

HASTINGS, *Senior Circuit Judge*. Defendant was charged in an information with a violation of Title 21, U.S.C.A. § 331(q)(4) for failure to keep a complete and accurate record of and with respect to certain depressant and stimulant drugs.[1] He was represented at all times by competent privately employed counsel. He properly waived his right to trial by jury.

Prior to trial, pursuant to Rule 12(b)(1), Federal Rules of Criminal Procedure, Title 18 U.S.C.A., defendant

[1] The body of the brief information reads: "That on or about the 3rd day of December, 1968, in the Northern District of Indiana, JAMES STANLEY REIFF did knowingly engage in the selling and disposing of certain depressant and stimulant drugs, and being so engaged, did fail to keep a complete and accurate record with respect to such drugs, in violation of Section 331(q)(4), Title 21 of the United States Code."

moved to dismiss the action upon the general ground that his prosecution under section 331(q)(4) was a denial of his Fifth Amendment privilege against self-incrimination.[1]

After a full hearing in open court, defendant's motion to dismiss was denied. A trial to the court, without the intervention of a jury, immediately followed. Defendant was found guilty and thereafter was sentenced to a term of one year, six months to be served and the remaining six months on probation. Defendant appealed. We affirm.

On appeal, defendant raises two issues, the denial of his invocation of the privilege against self-incrimination as a defense to the charge and his contention that the evidence submitted was insufficient to sustain his conviction.

On our examination of the entire record, we conclude the trial court would have been justified in finding that defendant was an Indiana licensed osteopathic physician and as such was entitled to have and to dispense the drugs involved. Between the years 1966 and May, 1968, defendant purchased and received some 98,100 dosage units of controlled drugs from certain recognized distributors of the same. On June 13, 1968, an inventory of drugs on hand was made by Agent Jackson of the Federal Bureau of Narcotics and Dangerous Drugs. This inventory disclosed there were approximately 3,780 dosage units of controlled drugs in defendant's possession. After May, 1968, defendant made one additional purchase of controlled drugs in an amount unspecified. Agent Kline examined defendant's premises on December 3, 1968 and found no beginning inventory of drugs as required by law, nor did he find any records relating to the disposition of the controlled drugs which came into defendant's

[1] The substance of the motion to dismiss reads: "1. * * * The defendant herewith invokes his Fifth Amendment privilege against self-incrimination as a complete and absolute defense to said charge on the grounds that the keeping of said records might tend to incriminate the said defendant or might constitute a link in the chain of proof required to convict the defendant of a crime under the laws of the United States or under the laws of the State of Indiana. Defendant relies upon *Leary v. United States*, 37 L.W. 4357, *Marchetti v. United States*, 390 U.S. 39, *Grosso v. United States*, 390 U.S. 62, *Haynes v. United States*, 390 U.S. 85."

possession. Agent Strieff identified from the records in evidence the character of the drugs so received by defendant and that they were controlled drugs within the purview of the Federal Food, Drug and Cosmetic Act, 21 U.S.C.A. § 301, *et seq.*

At the conclusion of the government's case in chief, defendant rested his case without testifying or offering any evidence in his own defense.

Section 331 of Title 21 lists prohibited acts under the Federal Food, Drug and Cosmetic Act and in relevant part provides:

> "§ 331. Prohibited acts
>
> The following acts and the causing thereof are prohibited:
>
> • • •
>
> (q) • • • (4) the failure to prepare or obtain, or the failure to keep, a complete and accurate record with respect to any drug as required by section 360a(d) of this title; • • •"

Section 360a is concerned generally with depressant and stimulant drugs and subsection (d) relates to records; inspection; rights of agents to enter, notice, scope, inventory, receipt for samples taken; and exemption of practitioners. The drugs identified in evidence in this case come within the reach of section 360a(d) as set out in section 331(q)(4), *supra*. Further, defendant, as a licensed practitioner regularly engaged in dispensing such drugs to his patients for charge, is of the class *not* exempted from the record keeping requirements of the Act.

Simply stated, defendant is charged with failing to keep required records with respect to depressant and stimulant drugs received and dispensed by him in the regular course of his medical practice. He is *not* charged with the illegal sale of such drugs, but solely with the failure to keep such records.

As above stated, defendant first charges that the record keeping requirements of section 331(q)(4) violate his Fifth Amendment privilege against self-incrimination. He

relies upon the authority of *Leary* v. *United States*, 395 U.S. 6 (1969) and the preceding holdings in *Marchetti* v. *United States*, 390 U.S. 39 (1968); *Grosso* v. *United States*, 390 U.S. 62 (1968), and *Haynes* v. *United States*, 390 U.S. 85 (1968). The short answer to this contention is that defendant, as do so many others, misreads the import of *Leary* and the *Marchetti* trilogy, and his complete reliance upon them is misplaced.

The records required by section 331(q)(4) are not records of an unlawful activity, thus compelling the disclosure of a crime. Rather, they are required records of a lawful professional activity in dealing with dangerous drugs under the Act. This legislation is a part of the authorized governmental plan regulating the legitimate drug industry from manufacturing to dispensing controlled drugs.

There is no claim here that records kept by defendant would have disclosed the commission of a crime in the unlawful disposition of controlled drugs. There is no claim that defendant unlawfully disposed of such drugs. The sole charge is that having had and disposed of such drugs, defendant kept no inventory and disposal records. This is not within the proscriptions of *Leary*, *Marchetti*, *Grosso* and *Haynes*, *supra*. *Cf. United States* v. *Warren*, 6 Cir., 428 F. 2d 15, 17 (1970), citing *United States* v. *Whitehead*, 6 Cir., 424 F. 2d 446 (1970).*

Finally, on the Fifth Amendment question, in the argument on the motion to dismiss and on trial, defendant makes a gratuitous reference to the fact that "there is already the criminal charge against the Defendant in the State Court of Indiana of which he has been convited [sic], and which is now on appeal to the Indiana Supreme Court, and I would rely upon the cases cited in our Motion to Dismiss." We fail to see where any conviction of defendant for violation of the so-called Indiana Dangerous Drug Act has any relevance in the matter now before us on appeal.

---

*See a recent decision of this court in No. 17631, Leuchli, Jr. v. United States of America, 7 Cir., ... F. 2d ...., (Slip opinion, September 28, 1970).

Defendant's second ground for reversal is predicated on his assertion that his conviction is not sustained by sufficient evidence. We find no merit in this contention. Our reading of the evidence of the ten witnesses representing firms in the drug industry who had business dealings with defendant in his purchase and receipt of the known 98,100 dosage units of controlled drugs, the documentary evidence of such business transactions, together with the testimony of the three federal agents who investigated this case, conclusively shows that the trial court was amply justified in finding defendant was not a member of any exempt class and in further finding him guilty of the offense charged.

To say there was a fatal absence of proof that defendant was a duly licensed practicing physician or to say there is no proof that he disposed of the controlled drugs he possessed in the regular course of his practice, for charge, is to completely ignore the "realities of the circumstances here presented [which] serve only to highlight the artificiality of the defendants' arguments concerning burden of proof and insufficiency of the evidence." *United States* v. *Roulette*, 7 Cir., 397 F. 2d 475, 480 (1968).

Further, *Roulette*, *supra*, concerned with convictions under 21 U.S.C.A. § 360a(b), and citing *McKelvey* v. *United States*, 260 U.S. 353, 357 (1922); *United States* v. *Safeway Stores*, 9 Cir., 252 F. 2d 98, 101 (1958); and *United States* v. *Davis*, 7 Cir., 261 F. 2d 93, 97 (1960) convincingly answers the contention here that the government had the burden and failed to prove that defendant was not within the class exempted from the record keeping requirements of § 360a(d). See also *United States* v. *Undetermined Quantities of D. or S. Drugs*, D.C.S.D. Florida, 282 F. Supp. 543, 544-545 (1968).

Even if it could be shown that the government had such a burden, considering the evidence here in the light most favorable to the prosecution, *Glasser* v. *United States*, 315 U.S. 60, 80 (1942), we would conclude that such burden was discharged.

In sum, defendant acquired and dispensed the controlled drugs in question and failed to keep the records required by the Act. His judgment of conviction and sentence will be affirmed.

AFFIRMED.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CR.NO. 695 Cr.1
	)	
vs.	)	
	)	
JAMES S. REIFF,	)	
	)	
Defendant.	)	

JUDGMENT OF THE COURT ENTERED
SEPTEMBER 15, 1969

JUDGMENT OF THE COURT

THE COURT: Well, the Court is ready to rule.

This indictment is very brief and to the point. It just charges that the Defendant engaged in selling and disposing of certain depressant and stimulant drugs and did fail in that to keep a complete record, as charged by 331(q)(4).

And the prohibited act that that involves is the failure to prepare or obtain

or the failure to keep a complete and accurate record with respect to any drug, as required by Section 360a(d) of this Title.

360a (d) of this Title requires that every person manufacturing, delivering or otherwise disposing of any such drug shall, upon the effective date of this section, prepare a complete and accurate record of all stocks of each drug on hand and keep such record for three years, and shall thereafter keep a complete and accurate record of each drug, such drug sold or otherwise disposed of, as listed by the Secretary's set of findings.

The proviso that Mr. Roberts places great stress upon is 360a, subparagraphs--

MR. ROBERTS: 360(d)(3), Your Honor.

THE COURT: (d)?

MR. ROBERTS: (3).

THE COURT: No. (b).

Capital (B)?

MR. ROBERTS: No.

THE COURT: (3).

MR. ROBERTS: I think the lettering system them, Your Honor, on that statute, I believe that should be 360(d)(3) or (b)(3).

THE COURT: (B)(3).

MR. ROBERTS: But it is a part of sub-section (d).

THE COURT: It is not -- but the sub-section to which he refers, which I believe is (d)(B)(3)?

MR. ROBERTS: Yes, sir. (d)(B)(3).

THE COURT: It refers back to paragraphs (1) and (2), and with that we are not con-

cerned, because we get down to subparagraph (7) and the breakdown thereof, and we find that the reference that involves the proscribed Acts and admittedly they are complex and refer back and forth, but I think that when we get down to the bare fundamentals of the Act charged in this information, and refuse to be diverted by some of these other subsections that upon close examination do not pertain to us here, we are confronted with a charge of a dispensing of a drug found by the Secretary to be on its depressant list, and not having kept the records which the evidence, without dispute, points up was not kept by this Defendant.

Accordingly, the Court has no alternative but to find the Defendant guilty, as charged in this Information.

(T.P. p. 256, l. 1 to p. 258, l. 12)

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1051

JAMES S. REIFF, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Northern District of Indiana, petitioner, a licensed physician, was convicted of having failed to keep accurate and complete records with respect to dispensing of depressant and stimulant drugs, in violation of 21 U.S.C. 331(q)(4). He was sentenced to one year's confinement, with six months to be served in prison and the remainder spent on probation. The court of appeals affirmed (Pet. App.).

Petitioner's sole contention in this Court is that Section 331(q)(4) violated his privilege against compulsory self-incrimination. The claim is fully answered in the opinion of the court below, upon which we rely. As that opinion points out, the record-keeping requirement is not directed at a group or class inherently suspect of criminal activity. The requirement rather deals with "records of a lawful professional activity in dealing with dangerous drugs under the Act" (Pet. App.).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

JANUARY 1971.

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